

A Work Project, presented as part of the requirements for the Award of a Master Degree in
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**SHOULD PARTLY PUBLIC-OWNED COMPANIES DELIVERING
PUBLIC SERVICES BECOME BENEFIT CORPORATIONS?
AN ASSESSMENT BASED ON THE
CASE STUDY OF
AFAM - FARMACIE COMUNALI FIRENZE**

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Abstract

This work project provides an answer to the question: should partly public-owned companies delivering public services become benefit corporations? All through the analysis of AFAM - Farmacie Comunali Firenze, the first mixed public-private company in Europe, as well as the first network of pharmacies in the world, to become a benefit corporation. The paper focuses on the Italian context due to the nationality of the company, the novelty of the legal form of benefit corporation in Italy, and the limited literature on the topic. Demonstrating qualitatively how the legal form of benefit corporation is the ultimate legal status for semi-publicly owned companies delivering public services.

Keywords: benefit corporation, AFAM, public services, partly public-owned companies

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1. Introduction

Contrary to what the neo-liberal thinking and traditional capitalism believe, economic growth and profit generation cannot be pursued at the expenses of or without regard for the surrounding society. In fact, it is precisely the latter that allows and supports the previous ones. If companies, therefore, want to survive in the future, they must also create social welfare. For this reason, the new legal form of benefit corporation has been created, combining the aims of the for-profit and the nonprofit model. Partly public enterprises delivering public services, which by their nature, should originate public benefit, nevertheless still present a series of problems related to transparency, waste of public resources and the role of guarantors of inalienable rights. In this work project, which focuses on the Italian context, the author wonders if the semi-publicly owned companies delivering public services should become benefit corporation, in order to solve their problems and have a legal form that formalizes what they do in terms of common benefit. To answer this question, the author takes as concrete example, AFAM - Farmacie Comunalì Firenze, the first Società Benefit with public-sector participation operating in the pharmaceutical sector in Europe. The first part of the paper focuses on the legal form of benefit corporation; giving the definition that the latter assumes in its country of origin, the United States, and that assumes instead in the Italian context, where it has been shaped on the basis of the American model. After illustrating the steps necessary for a company to become a Società Benefit in Italy, considering also the Italian nationality of AFAM, the author outlines the main differences with the American context. Subsequently, in the second part, the discussion begins, presenting partly public-owned companies, their problems and their role in the protection of Fundamental Rights; explaining how the legal form of Società Benefit could be the solution. As example of service provider, the author takes the pharmaceutical sector with its connected right to health, given the sector of AFAM. In addition, a focus on municipal pharmacies is present, in order to clarify the nature and the specific characteristics that distinguish AFAM

pharmacies. Afterwards, the author presents AFAM as the first Società Benefit with public-sector participation in the pharmaceutical sector, demonstrating through it, how it is possible, and above all beneficial, for this type of companies to transform into benefit corporations. Finally, a framework, which aims to be a reference point for all companies but especially for semi-public ones, has been presented, in order to select in a more relevant way the specific public benefits to include in the articles of association.

2. Research methodology and literature review

The topic of this work project, namely benefit corporation applied to partly public-owned companies delivering public services, is completely new. There is no academic literature on the point. Thus, academic literature review deals separately with the topics of benefit corporations in the USA and in Italy, and with mixed private-public companies delivering public services in Italy. The only references on the topic are four newspaper articles. Therefore, the research methodology combines the analysis of the academic material in terms of benefit corporations and partly private companies delivering public services, the analysis of newspaper articles and of the materials provided by AFAM together with the ones found in its website. In addition to two in-depth interviews made to Massimo Mercati (General Manager of AFAM and CEO of Aboca) and Jacopo Orlando (Public Affairs & Project Development Manager of Aboca), and informal interviews and phone calls with experts, professors and entrepreneurs: Luciano Cimbolini, Maurizio Zordan, and Stefano Pozzoli. Due to the nature of the available and collected data, the only analysis possible is the qualitative one.

Part I

3. Defining benefit corporation

In the following chapters, it is explained what a benefit corporation is, its characteristics and peculiarities according to the American and Italian context, together with the main differences between the two countries.

3.1. Definition in the US context

In 2010, B Lab, a nonprofit organization founded by three Stanford University colleagues (Bart Houlahan, Jay Coen Gilbert, and Andrew Kassoy), shapes the benefit corporation legislation, together with the law firm Drinker Biddle & Reath LLP. Maryland has been the first American state to approve and introduce the benefit corporation legislation in April 2010 and, at this time, 34 states (six are currently working on the implementation) have adopted the benefit corporation status. B Lab is a nonprofit that, as mentioned in its website, redefines the role of business in society, moving from the concept of competing simply for being the best in the world to the best for the world; indeed the creation of this new corporate form has been just a natural step. On its website, B Lab defines benefit corporations as “companies locked in on their mission to use business as a force for good” and as “a new legal tool to create a solid foundation for long-term mission alignment and value creation”. The benefit corporation legislation “protects mission through capital raises and leadership changes, creates more flexibility when evaluating potential sale and liquidity options, and prepares businesses to lead a mission-driven life post-IPO” (benefitcorporation.net). Moreover, benefit corporations are blurring the lines between the nonprofit and for-profit sectors by embracing business as a vehicle for social good (Stecker, 2016). They create and pursue a general public benefit (material positive impact on society and the environment), which is written in the articles of association, in addition to return profits to shareholders. Thus, the benefit corporation form is legally a for-profit, socially obligated, corporate form of business, with all the traditional corporate characteristics combined with societal responsibilities (Hiller, 2013). In fact, these types of companies require their directors and officers to consider the impact of their decisions in a triple-bottom-line approach (economic, environmental and social sustainability), pursuing not only shareholders’ interests but also stakeholders’ ones. The public benefit goals become part of the company’s articles of association, committing directors and officers to their pursuit.

Hence, unlike traditional for-profit entities, benefit corporations, are subject to additional legal requirement in terms of purpose, accountability, and transparency. They must, as previously mentioned, have a corporate purpose to create a material positive impact on society and the environment; expand the fiduciary duties of directors requiring consideration of non-financial interests; and in terms of transparency, benefit corporations must report on their overall social and environmental performance assessed against a comprehensive, credible, independent and transparent third-party standard (Collins & Kahn, 2016). The B Lab's B Impact Assessment Survey is the most widely used third-party standard since it is also free of charge. In this way, doing good by doing well is now possible (Stecker, 2016).

3.2. Definition in the Italian context

On December 28th 2015, the Italian Parliament has passed the Stability Law 2016 (hereafter Legge di Stabilità 2016, in Italian), number 208 approving in clauses 376-384 a new kind of legal form: the benefit corporation (hereafter Società Benefit in Italian). This type of corporate form has been introduced in Italy based on the American model, making the Italian country the first in the world to establish this legal form across its entire territory. The introduction of Società Benefit has been possible thanks to the senator Mauro Del Barba and the founders of Nativa, the Italian partner of B Lab, Paolo Di Cesare and Eric Ezechieli, who begin the lobbying process for the draft law which later becomes the Legge di Stabilità 2016 (Valsan, 2017). Società Benefit can be considered a hybrid legal form between the nonprofit and the for-profit form since its main characteristic is the balance between the two traditional corporate forms' purposes. As a matter of fact, the interests of the for-profit and nonprofit model seem to be incompatible, but with Società Benefit they turn to be compatible. The clause 376 of the Legge di Stabilità 2016, defines Società Benefit as a company "that in the exercise of an economic activity, in addition to the purpose of sharing the profits, pursues one or more purposes of common benefit and operates in a responsible, sustainable and transparent manner towards

people, communities, territories and the environment, cultural heritage, social activities, public institutions and associations, and any other stakeholders.” Hence, this new legal form has a dual mission, the pursuit of lucrative (profits) and social (positive impact on society and stakeholders) purposes. The sole profit maximization, taking into account only the shareholder value, has led space to the pursuit of social welfare, common benefit. The latter is defined by the Italian legislator as “the pursuit, in the exercise of the economic activity of the Società Benefit, of one or more positive effects, or the reduction of the negative effects, on one or more categories referred to in clause 376”. To conclude, this new type of company voluntarily respects different and higher standards than a normal company in terms of: purpose, which, from simple profit extends to the positive impact on people and the environment; responsibility, which is addressed not only to shareholders but to all stakeholders; and transparency, which is maximized far beyond legal obligations (Cimbolini, 2018).

3.2.1 Steps to turn into a Società Benefit

The nine main steps that a company should follow to turn into a Società Benefit are summarized in the table present in Annex 1. Firstly, if a company wants to qualify as a Società Benefit, after being aware of its impacts, it must indicate in the articles of association to have, in addition to the traditional purpose of profit, common benefit purposes, operating in a responsible, sustainable and transparent manner. In particular, the indication of the corporate purpose aims at satisfying: the need to ensure that the company's activity does not deviate from the original will expressed by the company structure; and the need to define, in the interest of shareholders, the risks of the investment made (Campobasso, 2012). Secondly, short, medium and long-term functional objectives must be defined to realize the common benefit. In defining these objectives, it is important that the organization takes into account the interests and the needs of the stakeholders, by taking their decisions in a motivated way, based on objective data, so that the commitment is consistent with the organization's activities. Moreover, the Board of

Directors has to identify the structure or the person to whom to entrust the management of tasks, aimed at pursuing the common benefit as defined in the corporate purpose, by balancing the interests of business partners, the pursuit of common benefit and the interests of stakeholders. Normally, the common benefit responsible is identified in the top management, since it has enough authority to operate without restraints. Additionally, the Board of Directors should evaluate the impact generated and analyze any circumstances that have prevented or slowed the pursuit of the common benefit (Nigri, 2017). It approves the external evaluation standard and the annual benefit report concerning the pursuit of public benefit, which will be published on the company's website and attached to the integrated report, in order to be as transparent as possible. It is explicit that the responsibility for the pursuit of the common benefit falls on directors. For this reason, it is fundamental that the purposes of common benefit are as detailed as possible, not to fall under sanction actions (specified in clause 384 of the Legge di Stabilità 2016) by the Autorità garante della concorrenza e del mercato, the Italian institution responsible for overseeing the effective application of the common benefit objectives. On the other hand, with regard to the types of companies authorized to acquire the legal status of Società Benefit, in clause 377 of the Legge di Stabilità 2016, the legislator allows the pursuit of the common benefit purpose to all companies referred to in Libro V, Titoli V and VI of the Italian civil code. Therefore, the status of Società Benefit can be legitimately acquired by partnerships, limited liability companies and by cooperatives in compliance with the relevant discipline (Tarlantini, 2017). The official register of B Lab's Italian benefit companies, updated to 03 July 2018, indicates 195, of which 166 limited liability companies (S.r.l in Italian), 5 simplified limited liability companies (S.r.l.s in Italian), 9 limited companies (S.p.A in Italian), 9 cooperatives, 1 simple company (s.s in Italian), 1 general partnership (s.n.c.in Italian) and 2 limited partnerships (s.a.s. in Italian). Nevertheless, at the conferences dedicated to the topic of Società Benefit at the end of September, the lecturers already speak about more than 200 Società Benefit.

However, it is relevant to highlight that approximately 90% of them are limited liability companies, located mainly in northern Italy.

3.3. Description of the main differences between the US and Italy

Since the Società Benefit corporate form in Italy has been created looking at the US benefit corporation legal form, there are similarities between the two approaches, but also relevant differences. Before focusing on these aspects, it is important to clarify that Società Benefit and benefit corporation should not be confused with the certified B-Corp since in English the abbreviation for benefit corporation is B-Corp. The certified B-Corp is not a legal status but, as the name suggests, a company that has a certification issued by B Lab. More specifically, a company may obtain the label of certified B-Corp, if it scores more than 80 points out of 200 on the B Impact Assessment, the B Lab measurement system examining the company's impacts on governance, workers, community, and the environment. However, after two years of certification, certified B-corps, if they want to keep the label, have to turn into a benefit corporation by modifying their articles of association - including in the corporate purpose one or more common benefits. At the same time, a Società Benefit could not even reach the minimum score of 80 necessary to pass the assessment to obtain the B-Corp certification. After having clarified this fundamental difference, which confuses many people, it is possible to start the discussion about the divergent aspects between the Italian and American approaches towards benefit corporation. There are five main areas, where the two jurisdictions diverge: legal and social background, types of companies allowed becoming a benefit corporation, specificity of common benefit, directors' responsibility, and detail level of the benefit annual report. Firstly, the legal and social contexts in which the corporate form has been created differs significantly between the United States and Italy. In 2010, the US benefit corporation has been introduced to mitigate the dominant paradigm of the shareholder primacy, giving the possibility to directors to pursue purposes beyond mere profits. With an attention not only to shareholders'

interests but also to stakeholders' ones. On the contrary, in Italy, like most other civil law jurisdictions, directors may already take into consideration stakeholders' interests; thus, the concept of a shareholder primacy doctrine is weaker than the American equivalent (Pelatan & Randazzo, 2016). Even though, a company cannot have a different or additional scope than pursuing profits in the articles of association yet. As a result, the Italian benefit corporation legal form has been created to enable companies to have more than one corporate purpose, the so-called double scope. With the possibility to produce also, a common benefit for the society and the stakeholders. Legge di Stabilità 2016 creates a new business model that merges the benefits of the for-profit and nonprofit corporate form, giving the deserved relevance, first neglected, to the social dimension of the company. Secondly, unlike the US, where only for-profit companies can become a benefit corporation, Italy allows also low-profit businesses, including for example cooperatives and partnerships, to turn into a Società Benefit. Thirdly, the articles of association of a Società Benefit must contain one or more specific common benefits, and not of general scope like in the US. Indeed, also to contrast the possibility of corporate greenwashing and to increase the possibility of social purpose's achievement, if a Società Benefit violates the realization of common benefits, it will fall under sanction action for misleading advertising and unfair trading practices/competition, unlike the USA. Regarding directors responsibilities, the Italian law imposes stricter regulations than the American ones, particularly to guarantee a higher protection of stakeholders' interests. Besides the extended fiduciary duty and liability clause of directors, a Società Benefit must identify, as mentioned above, a person responsible for the pursuit of the social benefits and for the balance of the latter with stakeholders and shareholders' interests. Annually, in the Benefit Report the "benefit director" must explain the strategies implemented to pursue the common public benefit, as well as present a plan describing how the benefits will be met in the following years. Any violation of the norm would represent a breach of fiduciary duty and of Consumer Code provisions,

punished with personal liability and penalties for misleading advertisement. Also in terms of the “degree of detail” of the Benefit Annual Report, Italy and US differ. The Italian law requires a more detailed report, with the description, as mentioned above, of the actions implemented during the year and planned for the following year. In addition to an assessment of the impact generated, using an independent, credible and transparent evaluation third-party standard.

PART II

4. Analysis of semi-public companies delivering public services through AFAM

In this second part, the research question is answered through the analysis of AFAM - Farmacie Comunali Firenze, the first Società Benefit with public-sector participation operating in the pharmaceutical sector. Firstly, to better understand the subsequent assessment, partly public-owned companies are described, highlighting their role related to the safeguard of constitutionally guaranteed rights. Secondly, since AFAM operates in the pharmaceutical sector, it is analyzed the service provider role of pharmacies and their directly linked Fundamental Right to health. Thirdly, a focus is dedicated to municipal pharmacies and their social role due to the nature of AFAM’s pharmacies. Finally, it is presented the assessment of AFAM as Società Benefit and a framework that companies should use for identifying the specific public benefits to include in the articles of association. Demonstrating how the legal form of benefit corporation is the appropriate corporate form for all companies, but first of all for semi-publicly owned companies delivering public services. Besides, the whole second part refers to the Italian context, given the nationality of AFAM and the intention to focus on Italy due to the lacking literature and research on these issues.

4.1. Semi-publicly owned companies delivering public services

Public service means all those activities offered to the public for the satisfaction of the community’s needs. In the past, public service has been considered just the one provided by a

public entity. However, subsequently, the subjective conception of this service has been transformed into objective, which, regardless of the nature of the service provider, recognizes the nature of public service by virtue of its regime, dictated precisely for the satisfaction of the community's needs (Treccani encyclopedia). In Italy, one of the forms allowed for the management and delivery of the public service is the partly public-owned company: a limited company that offers public utilities, in whose capital share, the state holds shareholdings below 50%. The recourse to this model by the Italian local authorities has taken place in a significant way since the end of the 90s, when the so-called formal privatization has begun, involving the transformation of public economic bodies into private-public owned limited companies (Iorio, 2018). This massive shift has led to several discussions due to the increase in public spending (since these companies use public resources) and the reported lack of transparency. However, with the Italian Legislative Decree n. 175/2016, also known as “Testo Unico delle società partecipate”, the authorities have tried to improve the previous Legislative Decree on the point called “Madia Decree”, to curb public participation in companies and consequently contain public spending. Regarding transparency and anti-corruption, different Legislative Decrees have followed during the past years on the matter, but the latest legislative reference is the resolution number 1134 approved by the Italian Council of the National Anti-corruption Authority (ANAC). It operates within the legislative framework of Legislative Decree n. 97/2016 and of the above-mentioned Legislative Decree n. 175/2016. The main innovations introduced are the subjective nature of transparency regarding generalized civic access and publication obligations related to the organization and to the complex of activities carried out. But the focus remains on transparency in terms of anti-corruption, and not on topics such as social and environmental responsibility. Yet, with the legal form of Società Benefit, transparency is even more improved. In the traditional form of partly public-owned corporation delivering public services, the company must report the activities carried out, in order to meet

the service contract, only to the public entity. Therefore not to entities outside the service contract. With the new corporate form of Società Benefit instead, the company reports the results obtained publicly, through the Annual Benefit Report, and especially to an external body, the Antitrust Authority; that verifies the nature and the legitimacy of the information contained in the Report, and the correct pursuit of the public benefit purpose. In fact, in case of mendacious information, this third party control body lays down sanctions. In this way, the purposes of the service contract are made public and moved to the articles of association. A better transparency is useful also for the company itself, as it increases the brand awareness and attractiveness for investors because it is considered a sign of stability and reliability towards the market. Moreover, since the public services are linked directly or indirectly to constitutional Fundamental Rights, the service provider must guarantee that these rights are respected and safeguarded with its activities. In the subsequent chapter, it is presented an example of this through the pharmaceutical sector.

4.2. The pharmaceutical sector and its directly linked right to health

In the pharmaceutical service sector, the inalienable human right to safeguard is the right to health. The World Health Organization (WHO) defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". It also sets as a principle: "The enjoyment of the highest attainable standard of health is one of the Fundamental Rights of every human being without distinction of race, religion, political belief, economic or social condition." For this reason, The WHO states "Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures" and "the achievement of any State in the promotion and protection of health is of value to all". In fact, also the main international Conventions, in line with what has been declared by the WHO, consider the right to health as one of the Fundamental Rights of the individual, whose protection belongs to Governments. Italy, for example, in its

constitution, “safeguards health as a fundamental right of the individual and interest of the community, and guarantees free healthcare treatments to the most deprived persons” (Article 32). Therefore, the Government must guarantee the achievement of all the conditions for this to happen. However, there are also other players responsible for health protection, including pharmacies. At European level, the Court of Justice recognizes that the activity of pharmacy, ensuring the correct medicine dispensing, plays an essential role in ensuring high standards of health protection within the European Union (Luciani, 2014). Standards and roles that are then defined according to the EU Member States. The Italian Constitutional Court, for example, defines "from a functional point of view, pharmacists as concessionaires of a public service" (Judgment Number. 448/2006) which is "preordained in order to ensure an adequate distribution of medicines, taking part of the largest organization set up to protect health" (Judgment Number 430/2007). In fact, the pharmacist's activity, despite being an expression of an economic initiative, should not be considered as equal as other commercial activities, but as an activity of public service, to safeguard health. Hence, the medicine dispensing through pharmacies falls completely within the right to health protection, constitutionally protected by Article 32 in the Italian constitution. Moreover, “the capacity of the pharmacy system to be close to the needs of the population makes the category a suitable entity to provide new services of social-healthcare value such as home care and screening, improving the efficiency and the effectiveness of the national health system.” (Former Health Minister Lorenzin in a speech during Farmadays in Fiera Verona, 2013). For this reason, it is important to ensure the presence of pharmacies not just in central areas, but also in suburbs. And this is a reality thanks to municipal pharmacies.

4.2.1. Municipal pharmacies and their social role

Municipal or public pharmacies have the same double function of private ones (economic and public service purposes), but their ownership belongs to a legal person: the municipality. Although to exercise its function, it needs a special regional confirmative measure

(authorization-grant), which legitimizes the performance of the municipal pharmaceutical service in the forms established by the sector legislation (Santuari, 2013). One of these possible forms is the limited company with public participation, established by Article 113 of the Tuel (Unified Text governing local authorities in Italian). Confirmed also by the judges of the Umbria Tar (Regional Administrative Court in Italy) in the judgment 78 of February 2018, that ends the discussion lasted several years on the legitimacy or otherwise of the attribution of municipal pharmacies' ownership to corporations. In fact, the judges clarify how the management of municipal pharmacies can be entrusted to limited companies as long as they have as sole object the management of the pharmacy, and not of something else. The municipal pharmacies are part of the city's social assets and according to many should be enhanced as, together with public healthcare players, create the best preventive health network and help to make the national health system even more efficient and effective. Since, moreover, in most cases it is a matter of public spending, municipal pharmacies should be managed to reinforce their role of "service pharmacies", as they offer the community not only medicines, but also, for example, the possibility of carrying out analyzes/controls (blood test, pressure measurement, vision and hearing control etc.) and of receiving healthcare information. In any case, in order to avoid that the commercial aspect of pharmacies prevails over the social and healthy ones, it is important to emphasize the professional role of pharmacists and a system of pharmacies that act in synergy (Montonati, 2018). AFAM- Farmacie Comunali Firenze represents a valuable example of this.

4.3. AFAM - Farmacie Comunali Firenze

AFAM - Farmacie Comunali Firenze (hereafter AFAM) is the first mixed public-private company in Europe, as well as the first network of pharmacies in the world, to become a benefit corporation. With over 60 years of activity, AFAM is present in Florence with a network of 21

municipal pharmacies and 14 medical offices. In 1952 the Florentine city council manned by the mayor La Pira establishes the municipal pharmaceutical firm Afam. After almost half of a century, in 2000, it turns into a public limited company with the name of Farmacie Fiorentine Afam S.p.A, becoming a public-shareholder firm, in whose capital participates the municipality of Florence and the group Comifar. In 2016 Apoteca Natura S.p.A, an international network of over 900 pharmacies specialized in self-medication, prevention, and natural products, belonging to the Aboca Group (Tuscan company leader in therapeutic innovation based on natural molecular complexes), acquires the 80% of Afam's shares belonged to Comifar, becoming the major shareholder. While the Municipality of Florence maintains its 20% of shares. With the new acquisition, Farmacie Fiorentine Afam S.p.A. chooses to change the company logo into "AFAM - Farmacie Comunali Firenze", to seal the strong relationship between the citizens and the institutions of the city of Florence (AFAM website). Indeed, the core business of AFAM is the management of municipal pharmacies and medicines' sale, but it also provides information and education about health, preventive medicine and the proper use of medicines together with the professional updating of its employees, in order to guarantee the best provision of social and health services entrusted to them by the city council. To formalize all these activities and integrate its social-health purposes into the articles of association, on March 20th 2018 AFAM turns its corporate form into Società Benefit, becoming the first public-private company in Europe and the first pharmacy network in the world to become a benefit corporation. The Article 4 of AFAM's articles of association explains the specific common benefits that the company wants to pursue through particular activities belonging to five different areas of impact: community/territory, support for research, disadvantaged groups, foreigners/tourists, and education/prevention. For the first area, the company, as said in its website, "makes available for the community a service to ensure people's health through the provision of pharmaceuticals, parapharmaceuticals, and self-diagnosis services ensuring

continuity and quality of the service even in peripheral territorial areas”. Through three 24H /7 municipal pharmacies, self-diagnosis and telemedicine services, and a service to book medical visits and exams. In addition, for the territory, since the "human health cannot exclude the respect for the environment" and in order to sustain the zero-emission mobility, AFAM has donated two electric cars to the Municipality of Florence and it has started using electric vehicles for internal transport. For the support of the research, “the company commits to integrate with other entities and health-care institutions in order to encourage research activities in collaboration with universities, hospitals and other bodies through the aid and structuring of care pathways for the population” (AFAM website). Moreover, since “everyone must be able to access the most suitable healthcare treatments, AFAM provides dedicated services to support therapies for the most fragile categories through: laboratories of social integration, voucher for free dispensation of pharmaceuticals to vulnerable groups, and mummy voucher that is a kit of products for each newborn”(AFAM website). While for foreigners and tourists, in order to overcome the possible linguistic and cultural barriers, this Società Benefit provides “a multilingual interpreting service at the Santa Maria Novella Pharmacy, cultural mediators for consultation to the main ethnic groups in the city, and brochures to inform tourists about access to Florentine health care facilities and services” (AFAM website). Lastly, for the psychophysical wellness education and prevention, AFAM provides training to its pharmacists, activates prevention campaigns and laboratories aimed at the public.

4.3.1 Reasons to turn AFAM and other semi-public entities into Società Benefit

Firstly, the holding company Aboca Group has always had a “systematic vision” of health, believing that different health needs are all interconnected and the determinants of health must be traced back to lifestyles and social relationships. For this reason, the company mission is not just selling pharmaceuticals, but also providing services and activities about health education and prevention, enhancing likewise the role of the pharmacist in these processes and the

proximity to the client. Moreover, in this direction, municipal pharmacies that have in their DNA public benefit purposes are consistent with the holding Group's model of pharmacy, demonstrating that there is no trade-off between the pursuit of profits and social goals. Because as the General Manager of AFAM and CEO of Aboca Massimo Mercati says "as a pharmacy, it would not make sense to sell a product, without involving the user on the path to health". The idea to turn AFAM into a Società Benefit starts precisely from Massimo Mercati in order to incorporate what the company has been already doing in terms of common benefits into the articles of associations. Indeed, Mercati believes "AFAM was already itself regarded as a Società Benefit since it is a public-private company like the other ones pursuing both profits and social goals. These companies are linked by service contracts that impose social obligations which are not included in the articles of association and for this reason they appear just as companies that pursue profits". Nevertheless, these companies can be already regarded as Società Benefit for their purposes, but not legally. Therefore, it is missing the transfer of their social purposes included in the service contract into the articles of association. AFAM is the first company of the Aboca Group to turn into a Società Benefit due to its limited size and to its intrinsic nature of partly private company. As the General Manager of AFAM states, "bringing the social objectives into the articles of association allows also the public partner to have an additional level of guarantee, because what was previously an obligation between the company and the municipality through the service contract, today becomes a constitutive and substantially unchangeable element of the company itself. To change this, the articles of association must be changed and although the municipality has the minority of shares, it has a power of interdiction and the social goals could not be questioned, also in case of some shareholders or managers changes". Thus, the public entity has a role of guardian in the company's shareholding and in the board of directors: safeguarding the protection of citizens' rights.

4.3.2. Transformation of AFAM into Società Benefit

The transformation into Società Benefit for AFAM lasts five months. It starts in early November 2017, when the company requests the support of an external consultant (Nativa) to identify the main stakeholders and formalize the common benefits offered. However, given the semi-public nature of the company, the active role of the municipality and the service charter is decisive in identifying the areas of impact. In this way, the stakeholder engagement is made indirectly, incorporating the elements of the social pact between the municipality and the community in the articles of association, as explained by Jacopo Orlando of Aboca. While the impact assessment of AFAM is made through the B Impact Assessment of B Lab, with a score of 85.6 points out of 200. Subsequently, in March, the board of directors approves the amendment of the articles of association and on March 20th 2018, AFAM officially becomes a Benefit Company.

4.4. Framework for identifying the specific public benefits

Beyond the legal steps necessary for the transformation into Società Benefit, there is no reference framework for the preliminary steps related to the identification of specific common benefits in the existing literature. The Italian legislator has granted companies the freedom to choose the public benefits they want to pursue, according to what it is defined in clause 378 of Law 208/2015. Even if the specificity of the benefit purposes is required, one of the criticisms against benefit corporations concerns precisely the too broad boundaries in defining the common benefits and in delivering public good. To counter this limiting factor, together with the definition of the perimeter of action and the measurement of the company's impacts, it is possible to follow some steps to identify the public benefits, so that they could be more specific and pertinent to the peculiarities and characteristics of the company in consideration. The following framework is divided into four steps:

1. Stakeholder mapping, which differs according to the company's nature, evolution and sector; prioritizing the stakeholders based on the relevance for the company;
2. Definition of the material activities, thus those reflecting the economic, environmental and social impacts of the company and which significantly affect the organization's ability to create value in the short, medium and long-term: through benchmark analysis and stakeholder engagement, if the company's resources allows it. In case of partly private companies delivering public services, the material activities correspond in most cases to those within the service contract or the social pact between the municipality and the community;
3. Impact assessment of material activities and prioritization based on their importance;
4. Choice of the common benefits to include in the articles of association, based on the materiality analysis, as the second corporate purpose besides the traditional one of creation and distribution of profits.

The choice of the social welfare purpose is crucial because it will become an integral and practically indelible part of the articles of association. It is, therefore, a choice that will bind the company to pursue these positive material impacts on society and the environment, even in the event of a change in management or company structure. And, which implicates in case of absence of pursuing or false declarations of the obtained results in the Benefit Report, "provisions pursuant to Legislative Decree n. 145, concerning misleading advertising and the provisions of the Consumer Code, pursuant to Legislative Decree n. 206" (Legislative Decree n. 208). Another encountered shortcoming is the indeterminacy and excessive generality of the methods and means to achieve social purposes. Although the latter's are specific, they lack details on how they can be achieved. However, if the company selects material activities, these will also be attached to material risks that should be managed responsibly if the company wants to have a sustainable development, if not survive in the medium-long term. For this reason, it

is necessary to establish a detailed strategic action plan with KPIs to ensure the achievement of these goals and consequently the sustainability of the company itself. Moreover, if investors understand material risks too, they will be able to better allocate their capital and will be more likely to invest in benefit corporations because of their risk awareness. To conclude, each year the company must set increasingly challenging objectives to pursue the goal of social welfare as required by clause 382 of Law 208/2015. To do this, it is essential to constantly update the analysis of the main stakeholders and monitor the results and impacts that the carried out activities have had on the recipients with reference to the generation of the common benefit.

5. Conclusion

The legal form of benefit corporation enables companies to have a double mission that is essential for them in the present but especially in the future to survive, pursuing sustainability in its triple-bottom-line approach (economic, social and environmental). Benefit corporations demonstrate that there is no trade-off between profit and social welfare, but on the contrary, they can pursue both missions, gaining competitive advantage and the preference of investors thanks to their risk awareness. Thus, this work project investigates in the Italian context if this new type of corporate form could be suitable also for partly public companies delivering public services. Through the assessment of AFAM - Farmacie Comunali Firenze, the analysis demonstrates how the intrinsic characteristics and the main rationale of mixed private-public companies match perfectly with the legal form of Società Benefit. In fact, the latter makes possible not only to give a legal form to the objectives of semi-public companies, contained in the service contract or in the social pact, but it also allows solving encountered problems regarding transparency, environmental and social impacts, especially regarding the protection of Fundamental Rights. To fight against opaque management and protect citizens' rights, even more, Società Benefit is the solution. Since it merges the goals of the public entity with the ones of the private sector. For this reason, the transformation into Società Benefit can also represent

the solution to the debate of the past years between the privatization and nationalization of companies delivering public services. AFAM is the first company to realize that this is the perfect legal form for delivering public services, being, in fact, the first mixed public-private company to become a benefit corporation in Europe. And, as a pharmacy, the one to contribute to the evolution of the pharmacy's paradigm: formalizing its commitment to safeguarding the inalienable right to health. Therefore, AFAM is the clear example of how this could be possible and how all the other companies of this type, be they municipal pharmacies or more generally partly public companies delivering public services, should be benefit corporations. With the possible creation of an estimated €2 Billion market in Italy, based on the data of the latest Istat (Italian National Institute of Statistics) report on partly public-owned companies.

6. Limitations and future research

Given the novelty of the legal form of benefit corporation in Italy, especially linked to the mixed private-public companies delivering public services, and the recent transformation of AFAM into a Società Benefit (March 2018), in this work project a qualitative and not quantitative analysis is carried out. Due to the lack of data on the topic and a too short time frame to be able to extract relevant data and results to answer the research question quantitatively. It would, therefore, be interesting to answer the same question in the future, with a quantitative analysis collecting data from more than one company, given that at moment exists only AFAM in Italy, in order to have a much firmer basis in the assertion of the thesis expressed in this paper. Moreover, an issue that is still highly controversial at the moment, which could be the subject of future analysis, is how to effectively measure the pursuit of the benefit mission. The lack of accountability and of a unique third-party standard are the most cited downsides of benefit corporation. According to many academics, neither the B Impact Assessment (the most common standard used by B Corps) nor the GRI Standards allow to measure quantitatively and in a detailed and specific way if the benefit mission has been delivered or has produced positive

effects. Consequently, there is a need for more innovative metrics of accountability for the company's public benefit expressed in its corporate statute, in order to avoid the risk of corporate greenwashing and to better communicate the obtained results to stakeholders and shareholders.

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8. Appendices

Appendix 1 - Steps necessary to a company to turn into a Società Benefit

1.	Be aware of its impacts
2.	Indicate common benefit purposes in the articles of association
3.	Operate in a responsible, sustainable and transparent manner
4.	Define short, medium and long-term functional objectives to achieve its purposes
5.	Identification of the structure/person responsible of the pursuit of the common benefit by the Board of Directors
6.	Make a draft of the annual benefit report

7.	Evaluation by the Board of Directors of the impact generated
8.	Approval of the external evaluation standard and the annual benefit report by the Board of Directors
9.	Publication of the annual benefit report on its website and attached to the integrated report

Transcript of the most relevant in-depth interviews:

08.10.2018 - Interview with JACOPO ORLANDO - Public Affairs & Project Development Manager of Aboca

Sabrina Giovisi: Good afternoon Jacopo. My name is Sabrina Giovisi and I am currently a student of International Management at NOVA School of Business and Economics. As you know, since this is the reason why I contacted you and your company, I am writing my work project on Società Benefit and more in particular on partly public-owned companies delivering public services. In my thesis, the research question is: should these type of companies become a benefit corporation? And I want to demonstrate that this is possible through the concrete example of AFAM - Farmacie Comunali Firenze. I know that you work for Aboca, but you are very close to AFAM as well and you could help me in answering few questions.

Jacopo Orlando: Good afternoon Sabrina. Yes, of course, I will try to do my best in helping you.

Sabrina Giovisi: Great, thank you very much in advance. Well, let's begin.

From where / whom started the incentive to transform AFAM into a Società Benefit? What kind of motivation has led you to consider taking this new legal form?

Jacopo Orlando: It all started three years ago, in 2015, before the law that introduced the legal form of Società Benefit in Italy. Since we were in contact with Nativa for Aboca to evaluate the possibility of being certified as B-corp. We had exceeded the score of 80 for being certified, but we did not proceed with the certification because we could not put another logo on the packaging of our products. So according to us the B-Corp certification instead of being an added value would have created only greater confusion. However, subsequently, with the Stability Law 2016, it was possible to transform the legal form of AFAM into Società Benefit, with the idea of transforming also that of Aboca and Apoteca Natura into the future. The drive to transform into Società Benefit started with Massimo Mercati and we started from AFAM for the size of the company and for the message we wanted to give as a private-public company.

Sabrina Giovisi: Perfect, AFAM became Società Benefit on March 20, 2018, Aboca instead when it became such?

Jacopo Orlando: 4 August 2018. Instead, Apoteca Natura is about to transform into Società Benefit.

Sabrina Giovisi: Ok, thank you. Returning to AFAM, since you are the first public-private company in Europe to be a benefit corporation, I want to better understand the main difficulties or the main benefits of being a mixed-capital company during the transformation into Società Benefit? Which was the role of the Municipality in it? Was it an advantage or an obstacle in the transformation?

Jacopo Orlando: The Municipality has never opposed this initiative, indeed. The role of Massimo Mercati and of the Aboca reality has been decisive in involving the Municipality. Because they believe that the Municipality should have an active role, given the impact on public services. So a role of guarantor both in the company's shareholding and in the board of directors. To demonstrate how we want to protect citizens' rights even more. All companies, especially mixed public-private companies delivering public services should have this type of legal form.

Sabrina Giovisi: Clear and how long did it take to modify the articles of association and what steps/procedures you followed for this change?

Jacopo Orlando: Everything started with Nativa in early November and in a few months it took shape, given that in March we became Società Benefit. The modification of the articles of association took place with Mercati and an external Nativa consultant to identify the common benefits offered. In the Board of Directors, also with the Municipality, the modification was approved. And subsequently the notary made the change effective.

Sabrina Giovisi: And in the definition of the benefit mission were also groups of stakeholders heard?

Jacopo Orlando: To identify the areas of impact of Aboca was used its original philosophy. The effort made was to transform the intrinsic characteristics of the company into binding commitments in the area of research, improvement of the environment, employees and people, culture and social structure. Therefore these commitments have been made formal and long-lasting. As it is an integrated supply chain, most of the stakeholders are internal to the company, so it was not necessary to do anything outside the company. With AFAM, on the other hand, it was different. In this case, in order to identify the areas of impact, in my opinion, the active role of the Municipality and the charter of services was fundamental, therefore stakeholder engagement occurred indirectly, taking elements of the social pact between the Municipality and the community.

Sabrina Giovisi: So we can say that the transformation into benefit corporation was a way to make the public service offered by your pharmacies even more transparent?

Jacopo Orlando: Surely. In fact, in my opinion, Società Benefit means not dividing the moment of benefit actions and the other corporate actions, even the strategic ones. An attention already present in the company was therefore made evident and formal, not for something of marketing or greenwashing. But as a formalization of something that was already done.

Sabrina Giovisi: To measure the impact of your actions and the success of your mission, do you use any tools? If yes, which one/ones?

Jacopo Orlando: Yes, we use the BLab Impact Assessment, which is the only tool capable of assessing the impacts up to now. The other existing ones are too descriptive and not of measurement of the final result, in quantitative terms.

Sabrina Giovisi: Who will prepare your annual Benefit Report?

Jacopo Orlando: We will prepare it together with Nativa.

Sabrina Giovisi: Are you also going to acquire the BCorp certification or will you remain just a Società Benefit?

Jacopo Orlando: We are considering the idea of taking the certification.

Sabrina Giovisi: Perfect, we're done. Thank you very much again for your time and cooperation!

Jacopo Orlando: Thank you and if you need any extra material of the company especially related to Società Benefit I'll be delighted to send you everything you need.

Sabrina Giovisi: Many thanks again!

29.10.2018 - Interview with MASSIMO MERCATI - General Manager of AFAM and CEO of Aboca

Sabrina Giovisi: Good afternoon Mr. Mercati. My name is Sabrina Giovisi and I am currently a student of International Management at NOVA School of Business and Economics. As you know, since this is the reason why I contacted you and your company, I am writing my work project on Società Benefit and more in particular on partly public-owned companies delivering public services. In my thesis, the research question is: should these type of companies become a benefit corporation? And I want to demonstrate that this is possible through the concrete example of AFAM - Farmacie Comunali Firenze. I have already spoken with Jacopo Orlando, but I have other few doubts that I would like to solve in order to conclude my work project.

Massimo Mercati: Good afternoon Sabrina, perfect let's start with the questions.

Sabrina Giovisi: Firstly, since I have not found the articles of association of AFAM, could you confirm me that it is Clause 4 that attests the transformation of AFAM into Società Benefit, please?

Massimo Mercati: Yes, correct. And if you have not found it online, I will immediately send it to you.

Sabrina Giovisi: Thank you very much, very kind of you. Now I would like to concentrate the attention on the transformation process of AFAM into Società Benefit. Did you measure your impacts initially through the B Impact assessment? In addition to stakeholder mapping, have you carried out other analyzes in this direction to determine and formalize the common benefits that you have entered in the articles of association?

Massimo Mercati: What was done was to include in the articles of associations the purposes of the service contract, which before the transformation into Società Benefit were external. In the same way, the actions and impacts produced are no longer reported just to the Municipality and to the board of directors, but also externally, in a public manner.

Sabrina Giovisi: Since you are the first partly public-owned company in Europe to be a benefit corporation, I would like to better understand if there were any difficulties during the transformation into Società Benefit?

Massimo Mercati: The difficulties lie in the planning of actions, in putting them on the budget, but with the service contract the costs were already estimated. The challenge remains to improve the income statement and at the same time the services, having also a greater competitive advantage.

Sabrina Giovisi: How do you think this transformation can improve the transparency of your company? And of the other partly public companies delivering public services in general?

Massimo Mercati: With the legal form of Società Benefit, the aspect of transparency is even more improved. While in a normal relationship of service contract, the company that receives the assignment must report the activities carried out, so that they meet the service contract, only to the assignee, thus to the public body. So not to parties outside the service contract. With the legal form of benefit corporation instead, the company reports the results obtained publicly through the Benefit Report and an external body, the Antitrust Authority, verifies the nature and validity of the information contained in it. In fact, in the case of mendacious information, sanctions are envisaged by this third party control body. The purposes of the service contract are therefore made evident in public and transferred within the company articles of associations.

Sabrina Giovisi: Perfect, that was my last question. Thank you very much again for your time and help!

Massimo Mercati: Thank you. And if you need anything else, we're available to answer to you.

Sabrina Giovisi: Many thanks again!